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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1559

UNION MUTUAL LIFE INSURANCE COMPANY,
Petitioner,

v.

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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UNION MUTUAL LIFE INSURANCE COMPANY,
Petitioner,

v.

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered in this case on February 1, 1978.

OPINIONS BELOW

The opinion of the District Court for the District of Maine is reported at 420 F. Supp. 1181. The opinion of the Court of Appeals for the First Circuit is not yet officially reported. The opinions are reprinted in the Appendix to Petition as Appendix A and Appendix B, respectively.

JURISDICTION

The judgment of the court of appeals (reprinted as Appendix C) was entered on February 1, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether in computing its federal income tax a life insurance company must exclude from its "life insurance reserves" under Section 801(b) of the Internal Revenue Code of 1954, as amended, that portion of its reserves for noncancellable health and accident insurance known as the unearned premium reserve.

2. Whether in computing its federal income tax a life insurance company can be required to include in its investment income certain unearned interest on policy loans, when the method employed by the company, whereby interest is included only as earned, is in accord with generally accepted accounting principles and is the method approved by the National Association of Insurance Commissioners.

STATUTES INVOLVED

The pertinent provisions of Sections 801 and 818 of the Internal Revenue Code of 1954, as amended, (26 U.S.C.) are set forth in Appendix D.

STATEMENT

A. *Proceedings below.* This is a suit brought to recover federal income taxes and interest paid thereon for the calendar years 1958 through 1968. Petitioner is a "life insurance company" as defined in Section 801(a) of the Internal Revenue Code of 1954, as amended, (hereinafter

sometimes called the "Code") and as such its federal income tax liability is determined pursuant to Sections 801 to 820 of the Code.

Suit was commenced by Petitioner in the United States District Court for the District of Maine on October 15, 1974. In its complaint, Petitioner set forth six independent grounds for recovery of federal income taxes. After trial, the district court found that Petitioner was entitled to recover on four of the grounds set forth and not entitled to recover on two of the grounds set forth in the complaint, and on January 26, 1977, judgment was entered for the Petitioner.

On March 22, 1977, the government filed a notice of appeal to the First Circuit Court of Appeals with respect to two of the issues decided adversely to it, and on April 4, 1977 Petitioner filed a notice of cross appeal with respect to the two issues decided adversely to it. The court of appeals overruled the district court on the issues in the government's appeal and affirmed the opinion of the district court on the issues in Petitioner's cross appeal.

Petitioner now seeks a writ of certiorari to review the decision of the court of appeals with respect to two of the issues dealt with in its opinion — the issue involving the unearned premium reserve for noncancellable health and accident insurance and the issue involving unearned interest on life insurance policy loans.

B. *The reserve issue.* A life insurance company must establish reserves for the purpose of having funds available to pay claims on policies of insurance as such claims come due in the future. The source of these reserves is the premium payments received plus investment earnings on amounts set aside as reserves. At any point in time, the

amount of the reserve has to equal the difference between the present value of the future benefits to be paid and the present value of future premiums to be received, computed on the basis of recognized actuarial tables and an assumed rate of interest. (R. 772)[1]

That is, assuming the company will realize a certain rate of return on its investments and assuming future claims will arise in a manner consistent with the predictions contained in the actuarial tables used, the company can calculate a sum which, together with future premiums, will be sufficient to meet its obligations to its policyholders. This sum is the reserve.

A reserve must be maintained not only for life insurance, but for other forms of insurance as well, including health and accident insurance, and at any point in time the reserve must equal the difference between future benefits and future premiums. The Code, in Section 801(b) treats reserves for life insurance and reserves for noncancellable health and accident insurance identically.

The tax formula set forth in the Life Insurance Company Income Tax Act of 1959 (Sections 801-820 of the Code) recognizes the need of insurance companies to set aside substantial reserves to pay future unaccrued claims, and the need to augment these reserves with investment earnings. The theory is essentially that investment earnings which are needed to augment life insurance reserves (including reserves on noncancellable health and accident insurance) are not taxed. *Commissioner* v. *Standard Life & Accident Ins. Co.* 433 U.S. 148, (1977); *United States* v. *Atlas Insurance Co.*, 381 U.S. 233 (1965). Thus the larger the reserves

[1] Record references are to the Appendix to Briefs filed in the court of appeals.

which need to be augmented by investment earnings in order to be sufficient to pay future unaccrued claims, the greater the amount of the investment earnings which must be set aside and not currently taxed. The failure to include a particular reserve within the calculation causes the investment earnings earned with respect to that reserve to be taxed.

On its Annual Statements, prescribed by the National Association of Insurance Commissioners ("NAIC"), Petitioner reports its reserves for noncancellable health and accident insurance in two parts, which in the aggregate comprise the total reserve reported to the state regulatory authorities as held to pay future unaccrued claims under these policies. One portion of the reserve, which is not in dispute here, is the midterminal reserve. The other portion is what is known as the "gross unearned premium" reserve.

The gross unearned premium is actually held to pay future claims and future expenses, and on its tax returns Petitioner eliminated the expense element, or "loading" and included in life insurance reserves only the net unearned premium, which is the amount needed to be added to the midterminal reserve in order for the reserve to be sufficient to pay all claims arising after the end of the calendar year.

The Commissioner allowed the midterminal reserve as a proper life insurance reserve, but did not permit the inclusion of the unearned premium reserve in life insurance reserves under Section 801(b). The court below held that although the unearned premium reserve is held to pay claims arising after the end of the calendar year, it is not held for *future* unaccrued claims, within the meaning of Section 801(b).

C. *The unearned income issue.* Petitioner makes loans against the cash surrender value of life insurance policies issued by it, and includes the interest on these loans in its income as the interest is earned ratably over the life of the loan. Interest on these loans is precomputed from the date of the loan to the next policy anniversary date and if the loan is not paid at that time, interest is again precomputed from that date to the next policy anniversary date.

The interest is sometimes paid in advance in cash and sometimes simply added to the loan balance on the Petitioner's books by a method known as "loan discount", without any cash payment in advance. The parties have stipulated that half the unearned interest here in issue represents cash payments and the other half represents book entries without actual payment. (R. 756)

A policy loan may be repaid at any time at the election of the borrower, and if a loan is repaid prior to the anniversary date to which interest has been calculated, Petitioner calculates the exact number of days the loan has been outstanding and retains interest at the contract rate for only that exact number of days. Any balance of the precomputed interest is refunded or credited to the policyholder. Such refunding or crediting of unearned amounts is required by the contract of loan, and is customary in the life insurance business. (R. 144, 754)

The proper treatment of both the discounted interest and the interest received in advance in cash are at issue. At the end of each year, Petitioner has loans outstanding with respect to which interest has either been prepaid in cash for the remainder of the policy year or has been capitalized on its books in an amount equal to the total interest charge for the balance of the policy year. This

unearned interest is the amount of interest which will be earned on the loans for the period January 1 to the end of the policy years for the particular policies involved, and represents compensation for the use of money for periods after the end of the year. (R. 757)

The parties have stipulated that the amount of unearned interest is calculated by Petitioner as of each December 31 in a manner which is in accord with generally accepted accounting principles and which results in a precise determination of the amount of interest which has been earned and of that portion which has not been earned as of the end of the year. (R. 754) The amount of unearned interest calculated as of each December 31 is not reported by Petitioner on its tax return for that year, and is, to the extent earned, included in income for the subsequent year.

In the annual statement form filed by Petitioner with the state supervisory officials for each of the years involved, unearned interest was excluded from gross investment income. The annual statements were filed on the uniform annual statement forms adopted by the NAIC, and the exclusion of unearned interest is consistent with the manner required for purposes of such annual statements by the NAIC. (R. 756)

The parties have stipulated that the exclusion of unearned interest in the manner approved by the NAIC is in accord with generally accepted accounting principles. (R. 756)

The Commissioner determined that the unearned interest, both that paid in cash and that simply added to the loan balance, must be included in income in the year it was either received or added to the loan balance. The court below upheld the Commissioner's determination.

REASONS FOR GRANTING THE WRIT

A. The Reserve Issue

1. The Decision Below Is In Clear Conflict With The Express Language of Section 801(b) of the Internal Revenue Code.

As noted above, reserves are established for the purpose of having funds available to pay claims on policies of insurance as they come due in the future. At any particular point in time the reserve must equal the present value of future benefits to be paid less the present value of future premiums to be received.

For federal income tax purposes, and for annual statement reporting purposes, reserves are valued as of December 31 of each year, and are calculated to be an amount which, together with investment earnings and future premiums, will be sufficient to meet the actuarially expected claims arising after the valuation date.

On any December 31 valuation date an insurance company will have policies of insurance in force which have various anniversary dates in the following year. The insurance company is obligated to provide insurance coverage until the anniversary date and knows from its actuarial tables that claims will arise during this period. It is necessary that a reserve be held at the end of the year to provide for these claims just as much as it is necessary to have a reserve for claims which are expected to occur at later dates.

The court below understood the reserve in question to be a reserve held solely for the purpose of paying claims arising after the valuation date but within the current policy year, and concluded that a reserve held for such a

purpose was not a reserve held for *future* claims as required by the statute, and therefore did not qualify as a life insurance reserve.

The only definition of life insurance reserves is provided in Section 801(b) of the Code which defines life insurance reserves to be:

"(1) . . . amounts

(A) which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and

(B) which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance) involving, at the time with respect to which the reserve is computed, life, health, or accident contingencies.

"(2) . . . [which are] required by law.

The court below held that the reserve in question did not qualify as a life insurance reserve for the reason that it was held for claims arising in the current policy year, and even though these claims would arise after the valuation date, they were not future claims.

As previously noted, Section 801(b) defines life insurance reserves in part as amounts set aside to mature future unaccrued claims arising from noncancellable health and accident insurance contracts involving, *at the time with respect to which the reserve is computed,* life, health, or accident contingencies. In other words, the reserve must be set aside to pay claims on such contracts, which claims have not accrued as of the valuation date, and which at that time involve health, accident or life contingencies. Section

801(b) speaks only in terms of future unaccrued claims arising after a particular point in time, i.e., the valuation date, which is always the end of the calendar year. A claim arising one day after that point in time is a future unaccrued claim, and a reserve held to satisfy that anticipated claim is as much a life insurance reserve as an amount set aside to pay a claim which is actuarially expected to occur ten or twenty or fifty years later. Nowhere in Section 801(b) is any distinction made between future unaccrued claims which will occur in the current policy year and future unaccrued claims of a more long-term nature. A claim arising during the current policy year but after the valuation date is clearly a future unaccrued claim, and a reserve held for such a claim, provided it meets the other tests, is a life insurance reserve.

Claims arising after the valuation date but within the current policy year have always been understood to be future unaccrued claims. Indeed, the First Circuit Court of Appeals itself recognized this in *Commissioner* v. *Monarch Life Insurance Co.* 114 F.2d 314 (1st Cir. 1940), where, in discussing the unearned premium reserve on health and accident insurance, it stated:

> "This prorata unearned portion of the premium collected is clearly a technical insurance reserve pertaining to insurance and held against 'future', 'unaccrued', and 'contingent' claims." 114 F.2d at 321.

Moreover, the reserve held for payment of claims on policies of *life* insurance which arise between the valuation date and the policy anniversary has always been treated as a life insurance reserve within the applicable statutory definition. It is clear from Section 801(b) that reserves for life insurance policies and reserves for noncancellable health and accident policies are to be identically treated,

and there is no basis for excluding from life insurance reserves that portion of the reserve on noncancellable health and accident policies held for future claims arising during the current policy year.

In short, it is impossible to read Section 801(b) to produce the result reached by the court below. In order to arrive at the result, Section 801(b) would have to exclude from the category of future unaccrued claims those claims arising in the current policy year and would thus have to define life insurance reserves as amounts

> ". . . set aside to mature or liquidate . . . future unaccrued claims arising from life insurance and annuity contracts and claims arising from noncancellable health and accident insurance contracts accruing subsequent to the end of the current policy year."

The underlined language is not in the statute but has been read into the statute by the court below. This is obviously an improper interpretation of the statute. Any reserve held as of the valuation date for payment of a claim arising after that date is a reserve held for a future unaccrued claim, whether that claim is actuarially expected to occur one day or one year after the valuation date.

The portion of the reserve here at issue must earn interest in order for Petitioner's reserves to be adequate (R. 292, 487, 771), and the effect of the decision below is to subject that interest to taxation even though it is needed to be set aside as an addition to Petitioner's reserves for noncancellable health and accident insurance. The Life Insurance Company Income Tax Act of 1959 reflects a long-standing Congressional policy not to tax the portion of a life insurance company's income that is required to be added to reserves, *United States* v. *Atlas Life Insurance*

Co., supra, and the decision below flies in the face of that policy.

This issue of proper statutory construction is important to virtually the entire life insurance industry and its resolution will have immediate importance far beyond the particular facts of this case and the particular taxpayer involved. It is thus respectfully submitted that the writ should be granted in order that the foregoing statutory construction by the court below may be reviewed by this Court.

2. The Decision Below, Which is The Only Decision Which Has Been Rendered On This Important Issue Is Based Upon a Misunderstanding of The Nature of The Reserve in Question.

As discussed above, the court below characterized the reserve as being held solely for the purpose of paying claims arising in the current policy year. In fact, however, the reserve is held both to pay claims in the current policy year and to contribute to the cost of claims in future policy years. Petitioner produced at trial uncontradicted expert testimony relating to the nature of the reserve in question. This testimony was that the reserve is set aside to pay claims in the current policy year, and in addition to pay claims in years beyond the current policy year, and is not simply the portion of the reserve which is earned ratably as the period of coverage expires. (R. 298-299, 457-458) This point was emphasized in Petitioner's briefs before the court below, but throughout its opinion the court below assumes that it is dealing with a reserve held only for claims arising in the current policy year. While a reserve held solely for such a purpose does qualify as a life

insurance reserve as shown above, it would be unfortunate on this important issue to have the misunderstanding reflected in the court's opinion go uncorrected.

The court's confusion on this point is highlighted in footnote 3 of its opinion. There, in discussing the contention that a portion of the unearned premium reserve is set aside for claims arising beyond the current policy year, the court agrees that some portion of this reserve is so used, but goes on to state:

> "By including the midterminal reserve as life insurance reserves, the Commissioner has correctly differentiated between that part of the unearned net premium reserve designated to meet future claims and that part designated to be used during the current year."

In fact, no portion of the unearned premium reserve is included in the midterminal reserve, and the result of the court's opinion is to exclude the entire unearned premium reserve from life insurance reserves.

The midterminal reserve is simply the arithmetic average of the year-end ("terminal") reserve for the prior policy year and the year-end reserve for the current policy year.

To arrive at the total reserve held as of the valuation date for the payment of claims arising thereafter, the unearned premium must be *added* to the midterminal reserve. (R. 292-301) When only the midterminal reserve is included as a life insurance reserve, as was the case here, no part of the unearned premium reserve is included. The court below was simply wrong in suggesting that the portion of the unearned premium reserve which is in fact held for long-term commitments gets included in life insurance reserves by treating the midterminal reserve as a life in-

surance reserve. The court below was also incorrect in its statement that "all parties realized" that it is the mid-terminal reserve which must be retained by the company to meet the increased cost of insurance coverage over the life of the policy. The uncontradicted expert testimony was that the entire reserve, including the unearned premium reserve, is needed for this purpose and that without the unearned premium reserve, the reserve is inadequate. (R. 301)

The decision of the court below is the first decision rendered on this issue. There are currently at least five other cases pending in various courts dealing with this precise issue. In view of the complexity of this area of the tax law, the opinion below will no doubt be looked to for precedential value. This is an issue which is of importance to every life insurance company in the country issuing noncancellable health and accident insurance policies, and involves many millions of dollars of taxes for these insurance companies. For Petitioner alone, this issue involves approximately $600,000 in taxes for its open years through 1976. It is respectfully submitted that the writ should issue so that the opinion below, based as it is on a misunderstanding of the reserve in question, will not stand as a precedent for the resolution of this issue in the future.

B. The Unearned Income Issue

1. This Court Should Review The Decision Below In Order to Resolve The Question of Whether Deferral of Prepaid Items Is Permissible Where Such Deferral Results In An Accurate Reflection of Income.

Interest, by its very nature, is earned only with the passage of time. This has been recognized by this Court in its

definition of interest as "compensation for the use or forebearance of money." *Deputy* v. *Dupont,* 308 U.S. 488, 498 (1940). On policy loans made by Petitioner, interest is earned day by day as each day passes, and at any point in time Petitioner can with mathematical certainty determine the amount of interest it has earned on each loan. The parties have stipulated that Petitioner's method of accounting for policy loan interest is in accord with generally accepted accounting principles and that it results in a precise determination of the amount of interest earned in each year. (R. 754, 756)

The method of accounting required by the opinion below is a totally artificial method which, instead of clearly reflecting income, results in a distortion of Petitioner's income, as can be demonstrated by a simple example. If a loan were made on a policy anniversary date of December 31, 1977 with a year's interest charged in advance, logic and sound accounting practice would tell us that one day's interest has been earned in 1977, and the balance of the interest, if earned at all, would be earned in 1978. The court below would require Petitioner to accrue a full year's interest in 1977 and report no income from this loan in 1978, even though it remains outstanding for 364 days in 1978. When one considers that the compensation received is directly related to the length of time the loan is outstanding and is compensation for keeping that loan outstanding, it is difficult to conceive how treating this compensation as totally earned on December 31 results in a clear reflection of Petitioner's income.

Similarly, if a loan were made on January 1 on a policy with an anniversary of July 1, on January 1 an interest charge would be made for the period January 1 through June 30, and on July 1 interest would again be charged

through to the succeeding June 30. Under the method approved by the court below, 18 months' interest would be reported in the year the loan was made, resulting in an acceleration of income from one year to another. Petitioner's method of accounting reflects clearly the economic realities of the situation and includes 12 months' interest for the 12 months during the year that the loan is outstanding, and 6 months' interest in the subsequent year. The inclusion of 18 months' interest in one year rather than spreading it over the life of the loan cannot result in a clear reflection of income.

The court below, relying on this Court's opinions in *Schlude* v. *Commissioner*, 372 U.S. 128 (1973) and *American Automobile Association* v. *United States*, 367 U.S. 687 (1961), found there to be a presumption against deferrals, and held that both the prepaid and the discounted unearned interest must be included in income. The court stated, however, that it "is unclear to us" whether any deferral can ever be permitted as part of an accrual accounting method. This same court of appeals has earlier expressed the same uncertainty in *New England Tank Industries* v. *Commissioner*, 413 F.2d 1038 (1st Cir. 1969) where it stated that it was "not sure that *Schlude* and *American Automobile Association* v. *United States* . . . proscribed detailed inquiry into the accuracy of the reflection of income by deferral techniques in specific cases." 413 F.2d 1038, 1039.

This Court's opinion in these two cases and in *Automobile Club of Michigan* v. *Commissioner*, 353 U.S. 180 (1957) have created disagreement and uncertainty in other courts as well. The government customarily takes the position that these three cases prohibit all deferrals of prepaid amounts absent specific statutory authority. In *Artnell Co.* v. *Commissioner*, 400 F.2d 981 (7th Cir. 1968) the Tax

Court had held that this Court in *Schlude*, *American Automobile Association* and *Automobile Club of Michigan* had adopted a rule of law prohibiting deferral of income regardless of the merits of the taxpayer's accounting system. The Seventh Circuit Court of Appeals rejected this statement of the law and concluded that this Court had not established an absolute prohibition against deferral of prepaid amounts, and stated that "there must be situations where the deferral technique will so clearly reflect income that the court will find an abuse of discretion if the commissioner rejects it." 400 F.2d 981, 985.

This same court had earlier relied on *Schlude* to prohibit the deferral of prepaid policy loan interest in *Franklin Life Insurance Co.* v. *United States*, 399 F.2d 757 (7th Cir. 1968), *cert. denied* 393 U.S. 1118.

In *Boise Cascade* v. *United States*, 530 F.2d 1367 (Ct. Cl. 1976) *cert. denied* 429 U.S. 867, the government asserted its customary position on this issue, which was squarely rejected:

> "It seems clear to me that, despite defendant's vigorous contention to the contrary, this trilogy of Supreme Court decisions cannot be said to have established an unvarying rule of law that, absent a specific statutory exception, a taxpayer may never defer recognition of income received or accrued under a contract for the performance of future services no matter whether such deferral clearly reflects income." 530 F.2d 1367, 1375-1376.

In the opinion below, Judge Tuttle relied, in addition to *Schlude* and *American Automobile Association*, on *Franklin Life Insurance Co.*, *supra*, *Jefferson Standard Life Insurance Co.* v. *United States*, 408 F.2d 842 (4th Cir., 1969), *cert. denied* 396 U.S. 828, and on his own opinion in *Southwestern Life Insurance Co.* v. *United States*, 560 F.2d 627 (5th Cir. 1977), all of which in turn have as their basis this Court's opinions in *Schlude* and *American Automobile Association*.

Every decision to date on this issue of prepaid policy loan interest is thus based on these two opinions of this Court which were premised upon the Court's finding that the taxpayer's method of accounting did not clearly reflect income, due to the fact that there were no specified dates upon which the services in question were to be rendered, and being performable on demand, the taxable year in which the services would be performed and in which the prepaid amounts would be earned, could not be determined in advance.

The uncertainty connected with the timing of the earning of income from the performance of services as in *Schlude* is in sharp contrast to earning interest on a loan. The dates upon which policy loan interest will be earned, if it will be earned at all, can be determined in advance to a mathematical certainty, and the exact amount of interest earned at the end of each tax year can be determined to the penny. In fact, it is difficult to imagine a situation in which the dates upon which prepaid income will actually be earned could be determined with any greater precision.

This court has never addressed the issue of deferral of prepaid items in those instances where the time at which the prepaid items will be earned can be precisely determined. It is respectfully submitted that this Court should review the opinion below and remove the uncertainty connected with this issue.

2. The Opinion Below Conflicts With This Court's Opinion In *Commissioner* v. *Standard Life & Accident Insurance Co.*, 433 U.S. 148, (1977).

Section 818(a) of the Code requires an insurance company to follow the NAIC accounting procedures, except

where they are "inconsistent with the dictates of accrual accounting." *Commissioner* v. *Standard Life & Accident Insurance Co.*, 483 U.S. 148.

Deferral techniques are not foreign to an accrual system of accounting. Indeed, the taxpayers in *Boise Cascade* and *Artnell* were accrual basis taxpayers and the deferral of prepaid income to the precise year in which it was earned was found to be consistent with the accrual method of accounting. Petitioner's deferral of prepaid and discounted interest is consistent with the NAIC accounting procedures and is in accordance with generally accepted accounting procedures. It results in a clear reflection of income and avoids distortions. As in *Standard Life & Accident*, Petitioner's method has just as much claim to being an accrual method as does the method dictated by the court below. This being so, Section 818(a) establishes a preference for this method, which overrides any presumption against deferrals, if such a presumption does exist in this situation. It is respectfully submitted that the opinion below should be reviewed because of this conflict with *Standard Life & Accident*.

3. The Inclusion Of The Precomputed But Unpaid Interest In Income Is Contrary To The Published Position Of The Internal Revenue Service And The Opinion Below Causes Insurance Companies To Treat Interest Income Differently Than Other Financial Institutions.

Revenue Ruling 70-540, 1970-2 Cum. Bull. 101 describes a transaction where a lending institution ("X") charges "points" in connection with mortgage loans. There $1,000 was charged as points in connection with a $20,000 loan, and

the borrower executed a note for $21,000, with the sum of $20,000 actually disbursed by the lender. This Ruling states:

> "In this situation, the points represent interest which is discounted (deducted from the face amount of the loan at the time the loan is made). Thus if X uses the cash receipts and disbursements method of accounting, X would include the $1,000 in gross income ratably as payments on the note are made. However, if X uses the accrual method of accounting, interest in the form of discount is includible as payments on the note are due, or as actually received, if earlier." 1970-2 Cum. Bull. 102.

Thus under this revenue ruling, neither a cash basis taxpayer nor an accrual basis taxpayer is required to report interest represented by loan discount at the time the loan is made, as is required by the opinion below, and there is no basis for treating interest on an insurance policy loan any differently.

This revenue ruling is consistent with earlier decisions of the Tax Court in *Gunderson Brothers Engineering Corp.* v. *Commissioner*, 42 T.C. 419 (1964) and *Luhring Motor Co., Inc.* v. *Commissioner*, 42 T.C. 732 (1964) both of which cases have been acquiesced in by the Internal Revenue Service. Rev. Rul. 67-316, 1967-2. Cum. Bull. 171. In *Bankers Union Life Insurance Co.* v. *Commissioner*, 62 T.C. 661 (1974) the Tax Court found the reasoning of *Gunderson Brothers* and *Luhring Motor Co.* to be equally applicable to discounted interest on life insurance policy loans. The court below expressly refused to follow *Bankers Union.*

It is respectfully submitted that the opinion below should be reviewed to eliminate the disparity in treatment between the way life insurance companies are required to treat unearned interest and the way all other lenders are permitted to treat unearned interest.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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